

1  
2 UNITED STATES DISTRICT COURT  
3 DISTRICT OF NEVADA  
4 RENO, NEVADA

5 SARA AND COLIN BATTERHAM, ) 3:11-cv-00527-ECR-WGC  
6 Plaintiffs, ) Order  
7 vs. )  
8 SURAT SINGH, KHALSA RESORTS, )  
9 Defendants. )  
10 )  
11 )

12 I. Background

13 Plaintiffs filed a Complaint (#1) on July 22, 2011 alleging  
14 four causes of action arising under state law: (1) Denial of CA  
15 State Wage Laws; (2) Defamation; (3) False Light; and (4) Infliction  
16 of Emotional Distress.

17 On January 5, 2012, we granted (#12) Defendants' Motion to  
18 Dismiss (#5) for lack of subject matter jurisdiction after finding  
19 that Plaintiffs have failed to allege facts that establish diversity  
20 jurisdiction. We dismissed the Complaint (#1) and ordered  
21 Plaintiffs to file an amended complaint within twenty-one days with  
22 properly pled jurisdictional facts.

23 On February 10, 2012, after their twenty-one day deadline,  
24 Plaintiffs submitted a Notice (#14) stating that Plaintiffs and  
25 attached copies of their Nevada identification.

26 On June 4, 2012, Plaintiff Sara Batterham filed a Motion for  
27 Default Judgment (#15). Defendants filed their Opposition (#16) on  
28 June 5, 2012. Plaintiff did not reply.

## II. Discussion

### **A. Plaintiffs Failed to File an Amended Complaint Pursuant to the Court's Order (#12)**

We dismissed the Complaint (#1) because Plaintiffs failed to allege facts in the complaint establishing a basis for the Court's diversity jurisdiction. However, we gave Plaintiffs a chance to file an amended complaint with properly pled jurisdictional facts. Plaintiffs failed to do so and instead filed an untimely response to the Court's order, a Notice (#14) alleging jurisdictional facts. Plaintiffs are advised that because we dismissed the Complaint (#1) in our previous Order (#12), there is no longer an operative complaint in this case, and there will be no complaint until Plaintiffs file an amended complaint.<sup>1</sup> While we cautioned Plaintiffs in our previous Order (#12) that failure to file an amended complaint within the time specified by the Court would result in dismissal, we will give the Plaintiffs one more chance to file an amended complaint that contains facts that allege the respective parties' residences and properly invoke the Court's diversity jurisdiction. However, should Plaintiffs again fail to timely file an amended complaint with jurisdictional facts, the case will be dismissed and closed.

### **B. Plaintiff's Motion for Default Judgment**

Plaintiff Sara Batterham moves for a default judgment on the basis that Defendants have failed to respond to the Complaint (#1).

---

<sup>1</sup> Plaintiffs are further advised that their Response (#17) to the Motion to Dismiss was not only very untimely, but filed after the Court had already issued an Order (#12) granting the Motion to Dismiss (#5) and therefore moot. Pursuant to Local Rule 7-2(b), responses are due fourteen (14) days after service of the motion.

1 However, as related above, we dismissed (#12) the complaint on  
2 January 5, 2012. Therefore there is currently no complaint for  
3 Defendants to responds to due to Plaintiffs failure to file an  
4 amended complaint in accordance with the Court's Order (#12).  
5 Plaintiff's Motion for Default Judgment (#15) is therefore without  
6 merit and must be dismissed.

7  
8 **III. Conclusion**

9 Plaintiffs have failed to file an amended complaint in  
10 accordance with the Court's Order (#12). Plaintiffs, however, in  
11 light of their pro se status, will be given one more chance to  
12 timely file an amended complaint with properly pled jurisdictional  
13 facts that establish this Court's jurisdiction.

14  
15 **IT IS, THEREFORE, HEREBY ORDERED** that Plaintiffs shall have up  
16 to an including October 19, 2012 to file an amended complaint  
17 containing factual allegations as to the parties' residences.  
18 Should Plaintiffs again fail to do so, this case will be dismissed.

19  
20 **IT IS FURTHER ORDERED** that Plaintiff Sara Batterham's Motion  
21 for Default Judgment (#15) is **DENIED**.

22  
23  
24 DATED: September 27, 2012.

25   
26 UNITED STATES DISTRICT JUDGE